

MAY 12 1978

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1977
No. 77-1436

GEORGE B. SETCHELL,

Petitioner,

vs.

ANOKA COUNTY, MINNESOTA,
(Sheriff's Civil Service Commission),

Respondent.

RESPONSE TO PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF
THE STATE OF MINNESOTA

ROBERT W. JOHNSON

Anoka County Attorney

EDWIN M. WISTRAND

Assistant Anoka

County Attorney

Anoka County Court House

Anoka, Minnesota 55303

Telephone: 421-4760

Attorneys for Respondent

INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provision Involved	2
Statute Involved	2
Statement of the Case	3
Reasons for Denying the Writ	5
Conclusion	7

AUTHORITIES CITED

	PAGE
<i>United States Constitution:</i>	
Amendment XIV	2

Cases:

In the Matter of the Discipline of George B. Setchell, Deputy Sheriff, Anoka County, Minnesota, —— Minn. ——, 261 N.W.2d 354 (1977)	2, 6
Hagen v. State Civil Service Board, 282 Minn. 296, 164 N.W.2d 629 (1969)	6
State ex rel. McCarthy v. Civil Service Comm., 277 Minn. 358, 152 N.W.2d 462 (1967)	6
Thoreson v. Civil Service Comm., —— Minn. ——, 242 N.W.2d 603 (1976)	6
Wilkes v. Hoaglund, 293 Minn. 425, 196 N.W.2d 475 (1972)	6

Statutes:

28 U.S.C. § 1257(3)	2
Minn. Stat. § 387.37	2
Minn. Stat. § 387.41	3

IN THE
Supreme Court of the United States

October Term, 1977
No. 77-1436

GEORGE B. SETCHELL,
Petitioner,

vs.

ANOKA COUNTY, MINNESOTA,
(Sheriff's Civil Service Commission),
Respondent.

**RESPONSE TO PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF
THE STATE OF MINNESOTA**

The Respondent, County of Anoka (Sheriff's Civil Service Commission), respectfully requests that this honorable Court deny the Petitioner's request that a Writ of Certiorari issue to review the judgment and opinion of the Minnesota Supreme Court entered in this matter on December 16, 1977, with rehearing denied on January 10, 1978.

OPINION BELOW

The Minnesota Supreme Court's opinion is reported as, *In the Matter of the Discipline of George B. Setchell, Deputy Sheriff, Anoka County, Minnesota*, — Minn. —, 261 N.W. 2d 354 (1977). The opinion is reproduced in the Appendix to Petitioner's Brief.

JURISDICTION

The Petitioner has invoked this Court's jurisdiction under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether Petitioner was denied due process of law where his discharge from his position as a deputy sheriff was accomplished pursuant to a procedurally correct hearing at which substantial evidence permitting a reasonable inference of intentional misconduct was introduced?

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution: Amendment XIV

"... nor shall any state deprive any person of life, liberty, or property without due process of law . . ."

STATUTE INVOLVED

Minn. Stat. § 387.37 (Reproduced on Page 2 of Petitioner's Brief.)

STATEMENT OF THE CASE

George Setchell, Petitioner herein, received a discharge hearing on July 24, 1974, before the Anoka County Sheriff's Civil Service Commission. The Commission found him guilty of misconduct pursuant to Minn. Stat. § 387.41, and discharged him from his position as an Anoka County Deputy Sheriff. Petitioner appealed to the Anoka County District Court, and Judge Robert B. Gillespie affirmed the Commission's Order. Petitioner subsequently appealed to the Minnesota Supreme Court which affirmed the Order of the District Court.

At Petitioner's hearing before the Commission, evidence was presented in support of two charges: (1) that Petitioner had improperly developed morgue photographs of an autopsy for his personal use; and (2) that Petitioner had willfully disobeyed a direct order of a superior to take certain drug evidence to the Bureau of Criminal Apprehension for analysis, and then had lied to that superior about having done so. After hearing eight witnesses present testimony, and after hearing the arguments of each party's attorney, the Commission made its Findings and Conclusions. With respect to the first charge, it found that there was "no direct evidence" that the Petitioner had "knowingly and willfully" taken the autopsy film in for development (P.B. A-6).^{*} With respect to the second charge, however, the Commission found that Petitioner had failed to follow the standard operating procedures of the Sheriff's Office; that he had "disobeyed a direct order" when he failed to submit the evidence for analysis; and that he had "lied" . . . "on several different occasions" when he stated that he had

^{*} "P.B." refers to Petitioner's Brief and Appendix.

done so (P.B. A-7). The Commission also found that Petitioner had a prior record of disciplinary action as a deputy sheriff, including a suspension for ". . . disobeying a direct order of a superior officer." (P.B. A-8). The Commission concluded that Petitioner had ". . . willfully disobeyed a direct order of a superior officer and failed to perform a duty which was a critical part of his assignment". (P.B. A-8) As a consequence of its Findings and Conclusion, the Commission ordered that Petitioner be discharged from his position as a deputy sheriff. (P.B. A-8)

On appeal to the district court, pursuant to Minn. Stat. § 387.41, Judge Robert Gillespie reviewed the evidence contained in the record and concluded that there was ". . . ample and substantial evidence to sustain the order of the Commission." (P.B. A-9) Upon review of the district court's Order, the Minnesota Supreme Court held that there was ". . . substantial evidence to support the finding of the district court that the commission's order discharging appellant was reasonable and based upon ample evidence . . .", and the Minnesota Supreme Court affirmed the order of the district court. (P.B. A-3)

REASONS FOR DENYING THE WRIT

PETITIONER WAS NOT DENIED DUE PROCESS OF LAW WHERE HIS DISCHARGE AS A DEPUTY SHERIFF WAS ACCOMPLISHED PURSUANT TO A PROCEDURALLY CORRECT HEARING AT WHICH SUBSTANTIAL EVIDENCE PERMITTING A REASONABLE INFERENCE OF INTENTIONAL MISCONDUCT WAS INTRODUCED.

This is Petitioner's third effort at seeking judicial review of his discharge from his position as a deputy sheriff. Two other courts have already considered his claims and have found them to be completely lacking in merit. Although Petitioner now purports to raise a Fourteenth Amendment due process issue, in fact his argument is once again based on nothing more than a challenge to the sufficiency of the evidence adduced in support of his discharge. As such, his Petition is simply a request that this Court second guess the factual determinations of the administrative body which originally found the facts, and the two courts which reviewed the facts on the record and determined the original findings to be thoroughly proper.

Significantly, Petitioner does not claim that the process by which he was terminated was procedurally defective. His argument is directed only to the substantive evidence presented at his hearing. He completely fails to appreciate, however, that the findings of fact made at the hearing were in large measure dependent on the Sheriff's Civil Service Commission's determination of the credibility of the eight witnesses who testified. Petitioner's complaint that his discharge was based on "merely pretextual evidence" (P.B. 5) would have merit only if one accepted as true all of his testimony at the hear-

ing, and rejected as false, or unreliable, the testimony of all other witnesses. This the Commission obviously did not do, and its conduct was indisputably proper.

As the Minnesota Supreme Court noted in its decision affirming Petitioner's discharge,

"... the commission, as the trier of fact, is empowered to weigh the conflicting testimony, and its findings, essentially having the effect of rejecting appellant's justifications for his conduct, are supported by substantial evidence. *Wilkes v. Hoaglund*, 293 Minn. 425, 196 N.W.2d 475 (1972); *State ex rel. McCarthy v. Civil Service Comm.*, 277 Minn. 358, 152 N.W.2d 462 (1967)."

In the Matter of the Discipline of George B. Setchell, Deputy Sheriff, Anoka County, Minnesota, — Minn. —, —, 261 N.W.2d 354, 355 (1977).

The findings of fact made by the Commission were based on a significant and substantial body of evidence. The Commission's inferences from those facts were reasonable. Two courts have reviewed the case and concluded that there was "substantial evidence" to support the findings, on the record considered as a whole. *Thoreson v. Civil Service Comm.*, — Minn. —, 242 N.W.2d 603 (1976); and *Hagen v. State Civil Service Board*, 282 Minn. 296, 164 N.W.2d 629 (1969). Petitioner's claim of insufficient evidence is based on nothing more than bare assertion. It utterly fails to raise a legitimate Fourteenth Amendment due process issue, and it manifestly does not deserve the attention of this Court.

CONCLUSION

For the foregoing reasons, Petitioner's request for a Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT W. JOHNSON

Anoka County Attorney

EDWIN M. WISTRAND

Assistant Anoka

County Attorney

Anoka County Court House

Anoka, Minnesota 55303

Telephone: 421-4760

Attorneys for Respondent